MOTION TO INTERVENE AS AMICUS CURAIE REGARDING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY THE HEARING PANEL OF THE JUDICIAL QUALIFICATIONS COMMISSION PERTAINING TO THE HONORABLE JUDGE MCMILLAN

Comes now 1,200 registered voters who filed Motions to Intervene as Amicus Curiae in support of Judge McMillan with this Court on or about March 24, 2000,. April 10, 2000, April 24, 2000, May 11, 2000 and May 17, 2000, whose requests are now resubmitted on their behalf, without assistance of legal counsel, by Joseph F. Mammina, Manatee County resident, registered voter and interested party, who has served in the Armed Forces of the United States Army for two years and was honorably discharged, and who is a retired police officer from the state of New York, who served his community in this capacity for twenty (20) years.

The purpose of this Motion is to respectfully request the Court to consider a situation regarding the aforementioned findings and recommendations, which has raised widespread concern among the voters of this community. I am not an attorney and sincerely hope that the Court will not be offended by my presentation should it not meet with all procedural requirements pertaining to such Motions. The facts, many of which I presented to the Court in a previous Motion, are as follows:

- 1. In September, 1998, approximately 13,000 voters in Manatee County, considering themselves to be informed and discerning, cast their ballots and elected, by a clear majority, Matt McMillan in the election for county judge.
- 2. Judge McMillan's election flew in the face of custom and caused political consternation in the power structure, as he ran against a sitting judge, something which had not occurred for over 30 years.
- 3. Judge McMillan and his family, as well as some of his supporters, were subjected to serious harassment and attempts at intimidation during his campaign and following his election.
- 4. The political and judicial power structure has unceasingly attempted to discredit Judge McMillan, despite public satisfaction with and support of his actions on the bench and the long-overdue improvements he has made to the local judicial system.
- 5. Certain members of the JQC have played a strong role in attempting to discredit Judge McMillan and have previously and consistently proven their bias toward Judge

McMillan through their actions, both in regard to displaying extreme and blatant bias in the months leading up to his original hearing date and by ignoring or denigrating the public outcry against their attempts to discredit him.

- 6. As one evidence of this bias, the hearing panel scheduled Judge McMillan=s hearing for January 18, 2000, a date they knew in advance his attorney could not be present, and refused to continue the hearing date so that Judge McMillan would be afforded his fundamental right to be represented by counsel. Under these special conditions, Judge McMillan entered into a Stipulation the day before the scheduled hearing date, which Stipulation and disciplinary recommendations were then submitted to this Court. Over 1000 citizens then petitioned this Court asking that Judge McMillan be allowed to remain on the bench.
- 7. I respectfully refer this Court to a statement which I made in a previous Amicus Curiae brief pertaining to the Stipulation and disciplinary recommendations submitted by the JQC to this Court, which I filed in May 2000 with 61 additional signatories: "But one need not be a legal genius to figure out what Judge McMillan and his lawyers must have concluded the day he signed that agreement (to the original hearing charges): the only possible chance he had to remain in office and to,

hopefully, put a stop to the persecution he and his family were being subjected to was to sign the agreement. Had he gone to a hearing (with or without his lawyer) before an obviously biased judge and jury (a judge and jury that would actually consider going ahead with a trial knowing that the defendant's lawyer could not be present!), he certainly would have been removed, for the panel and the hearing judge had already proven that they were not impartial. That was a fact on January 17, 2000, that was a fact on February 2, 2000, and that will always be a fact." I further stated that: "There was and is absolutely nothing to suggest that their unfair and biased behavior toward Judge McMillan would be corrected in any future encounter having to do with this or any other matter involving Judge McMillan." I submit that this is exactly what occurred, when Ain the interests of justice, @ this Court rejected said Stipulation and sent this case back for a trial before the very same panel that had displayed such a propensity for unfairness. The JQC continued to display its blatant bias during Judge McMillan=s trial by:

- a. Charge 1: Charging Judge McMillan with and finding him guilty of violations of Canons 1, 2 and 3 during his campaign, when, by definition, those Canons apply only to sitting judges and not to candidates.
- b. Failing to prosecute the incumbent, to whom these canons did apply, for

similar, yet far more blatant conduct.

c. Charge 3: Charging Judge McMillan with falsely or misleadingly asserting that his opponent, Judge Brown, exerted pressure upon Manatee County Sheriff Charlie Wells not to support McMillan and to obtain preferential treatment for his children when they were arrested. I point out that after the discovery process the JQC Prosecution and investigatory panel entered into a Stipulation with Judge McMillan whereby they chose to drop the charge of false or misleading assertion regarding placing pressure upon the Sheriff to not support McMillan. In said Stipulation, the JQC also dropped the charge of false or misleading assertion regarding Brown's pressure upon the Sheriff for preferential treatment for his children when they were arrested, yet, while apparently finding that the statement was correct, had Judge McMillan concede he was guilty of the charge because his statement of the truth was Aimproper. Upon rejection of the Stipulation by this Court, in the subsequent hearing the hearing panel: (1) ignored all defense testimony including that of the deputy who had been pressured to provide preferential treatment for one of Judge Brown=s children and all exonerating evidence; (2) accepted the impeached testimony of the Sheriff and the incumbent; (3) rejected the findings

of the investigatory panel; and (4) found Judge McMillan guilty of the original charges.

d. Charge 4: Charging Judge McMillan with violations of Canons 1, 2(a), 3(b)(5), 7(A)(3)(a), 7(A)(3)(d)(i)-(ii) by stating in a letter to the Honorable Earl Moreland, State Attorney for the Twelfth Judicial Circuit and copying the media that he "would always have the heart of a prosecutor". The JQC found Judge McMillan guilty despite that fact that: (1) the record reflects this letter was a private correspondence to Mr. Moreland attempting to refute false claims made by Sheriff Wells in an attempt to alienate Mr. Moreland from McMillan; (2) Mr. Moreland stated under oath that at no time did he interpret this letter as a request for an endorsement of McMillan by promising to show bias toward prosecutors, but rather an assurance to Moreland that McMillan had enjoyed his job as a prosecutor; (3) At no time was this letter intended as campaign literature or for public release, nor did McMillan ever release it to the public; (4) Contrary to the hearing panel=s findings, the letter contains no statement by Judge McMillan claiming that defense attorneys will not be happy with him as a judge; and (5) The letter was never published and cannot, therefore, be viewed, as the JQC claimed in finding McMillan guilty, as having "eroded

public confidence in the integrity and impartiality of the judiciary." (The record reflects that a copy was sent to a reporter on the local paper only after the reporter specifically asked McMillan for materials relating to any similar experience he might have had relative to an article the reporter was researching regarding tactics experienced by a candidate in a previous election campaign for judge. The copy was sent with a guarantee that at no time would the materials be published.)

e. Charge 5: Charging McMillan with violations of Canons1, 2(A), 3(b)(5), 7(A)(3)(a) and 7(a)(3)(d)(i)(iii) by creating the impression, through a campaign brochure assertion, that his opponent was responsible for the loss of revenue from unpaid fines and court costs and that their loss reflected a failure in the administration of justice in Manatee County. The panel=s assertion that the brochure=s reference to County-wide figures is misleading and attempts to assign blame to Judge Brown for County-wide losses is ludicrous, and no person of intelligence could so misconstrue this legitimate discussion of county-wide issues. Apparently recognizing that it had no basis in fact, the JQC Prosecution and the investigatory panel also dismissed this charge in the Stipulation. Yet in spite of the fact that: (1) nowhere in the brochure is Judge

Brown even mentioned; (2) the discussion of money owed to the county is a legitimate one; (3) the statements are based on accurate figures obtained from the Clerk of the Circuit Court; (4) and the charge had been dismissed by the JQC Prosecution and the investigatory panel in the Stipulation, the JQC hearing panel found McMillan guilty.

f. Charge 6: Charging McMillan with violations of Canons 1, 2(A), 7(A)(3)(d)(i)(iii) by stating in a campaign brochure that "Judge Brown treats crime like a part-time problem" and giving a false impression regarding the number of days Judge Brown was absent from the Court. The figures regarding Judge Brown's absences are substantially accurate, and the statement reflects a comparison of Judge Brown=s courtroom hours with those of other judges, not his vacation time. The overwhelming amount of research conducted and the documents submitted as evidence by the McMillan campaign, as well as testimony of a multitude of volunteers and researchers, from retirees to statisticians, substantiate that every effort was made to be factual and accurate, and any errors were purely unintentional. Additionally, McMillan=s campaign office submitted a letter to Judge Brown requesting he correct any errors prior to the release of the brochure. The JQC found Judge McMillan guilty despite: (1) the testimony regarding the research involved; (2) the testimony of individuals who witnessed the incumbent at home or leaving the courthouse early on a regular basis; (3) the substantial accuracy of the statements; (4) the impeachment of the incumbent=s testimony through actual court records; (5) the fact that the work hours of Judge Brown are the subject of legitimate scrutiny and (6) the fact that the statements are protected speech under the First Amendment.

g. Charge 7: Charging McMillan with violations of Canons 1, 2(A), 7(A)(3)(d)(iii) by stating that Judge Brown was not maintaining a full-time schedule and blaming the incumbent's failure to perform the duties of his office for overloading the Court system. The JQC found McMillan guilty despite the reasons listed above in e. The panel=s findings that McMillan made knowing, willful and intentional misrepresentations are baseless in light of the sworn testimony of the campaign advertiser that Judge McMillan advised him to change the brochure, but the campaign manager, against Judge McMillan=s wishes, and already released it.

h. Charge 8: Charging McMillan with violations of Canons 1, 2(A),

7(A)(3)(d)(i)-(iii) by providing misleading materials to the Bradenton Herald pertaining to Judge Brown's handling of certain court cases. The packet submitted was designed to the paper's specific request that it point out differences in McMillan's proposed handling of cases from that of Judge Brown and never went out to the public. As a matter of fact, The Bradenton Herald editorial supported McMillan's opponent, resulting in McMillan's rating among voters dropping. Prior to the hearing the JQC Prosecution dismissed one portion of this charge, although they had forced Judge McMillan to stipulate that he was guilty of this very charge on January 18, 2000! This alone should call into question the legitimacy of the process. The JQC hearing panel found McMillan guilty of the other portion of the charge at the trial despite the fact that the underlying premise of Judge McMillan=s criticism regarding the incumbent=s handling of prostitution cases, i.e. his failure to utilize geographic relocation, was correct. McMillan testified that he believed it was an ordinance. There is absolutely no evidence that this was a knowing and willing misrepresentation.

I. Charge 9: Charging McMillan with violations of Canons 1, 2(A), 3(b)(9), 7(A)(3)(a), and 7(A)(3)(d)(i)-(iii) by falsely and misleadingly misrepresenting incumbent's actions as to the sentencing of a defendant, Vincent Born, by

giving the impression that the defendant had served no jail time when in fact the defendant had served a substantial number of days in jail before his guilty plea was accepted. This statement was based upon data obtained by McMillan's wife from the County Probation Department. Despite: (1) The sworn deposition, in possession of the Prosecution, of a Probation Department employee stating that she had been instructed to give false information to Judge McMillan when he requested data; (2) the fact that the characterization of Brown's sentencing was not in error, only the name of the offender was, for Judge McMillan submitted court records proving that there were any number of offenders similar to Mr. Borne and sentenced by Judge Brown who had served no jail time; and (3) the fact that after discovery the JOC Prosecution stipulated that this was an unintentional misrepresentation, the JOC hearing panel found McMillan guilty. Here again, there is absolutely no indication of any knowing and willful misrepresentation on Judge McMillan's part.

j. Charge 10: Charging McMillan with violations of Canons 2(A), 7(A)(3)(a), and 7(A)(3)(d)(i)-(iii) by misleading the public through stating in a campaign brochure entitled "Sixteen Year Incumbent Judge George Brown Gives Criminals a Good Deal" that Judge Brown is "soft on crime" because "court

records show that Judge Brown gives criminals such light sentences that of 91,000 cases only 300 people have asked for a jury trial". Despite the fact that this information came from Judge Brown's own campaign literature and there is research to prove the deduction was at best, a reasonable one, and at worst, an unintentional misinterpretation, the JQC found McMillan guilty.

k. Charge 11: Charging McMillan with violations of Canons 1 and 7(A)(3)(a) by engaging in unbecoming and inappropriate behavior for the judiciary by making the statements referred to above and in a brochure entitled "Please Help Me Make Our Courts Work Better." Despite the fact that Judge McMillan was not in the judiciary at the time these statements were made and that these statements were correct and have now been further substantiated by Judge McMillan's performance on the bench and improvements to the system, the JQC Prosecution and investigatory panel forced McMillan to concede to its being improper in their earlier Stipulation and the hearing panel found him guilty.

1. By ignoring exculpatory evidence and the testimony of those who, under oath, lent credibility to Judge McMillan=s defense.

m. By ignoring the overwhelming mitigating circumstances, despite their acknowledgement of significant evidence supporting Judge McMillan's assertions of threats, intimidation, physical violence and political conspiracy against him and his family, and by incorrectly and unreasonably concluding such circumstances are irrelevant.

n. By failing to produce a single credible witness to substantiate the JQC's position that Judge McMillan is unfit to hold office. If "fitness for office@ is truly the standard by which Judge McMillan's should be judged, clearly the Prosecution failed to meet its burden, as there were no attorneys who have practiced before him, no litigants, and no defendants who either testified or stated publicly that Judge McMillan's overall performance has been anything other than fair and impartial. To the contrary, many witnesses, including attorneys, testified that Judge McMillan's performance has been outstanding, and proof of his improvements to the system, his creativity, and his hard work was commented upon by the panel members on the record and went uncontested by the Prosecution.

o. By ignoring the fact that the majority of the Prosecution witnesses were

impeached and their testimony was simply not credible. The only individual that the Prosecution could produce to state that Judge McMillan was unfit was Judge Thomas Gallen, who, after being excluded from the Courtroom due to the invocation of the Rule during the hearing, illegally and improperly arranged for secret microphone wires to be run from the Courtroom into his hearing room, and whose inconsistent and contradictory testimony brought his credibility into serious question. Judge Gallen's behavior lends further credibility to the concern among citizens regarding both the state of the judiciary and the attempts to discredit Judge McMillan. The very fact that the Prosecution would choose to call such a witness brings into question the entire process and goes far toward supporting allegations of conspiracy and corruption among the judiciary. It is interesting to note that no where in its findings does the hearing panel refer to its star Prosecution witness.

p. By ignoring the video tape of the Ocura DUI first appearance, in which Judge McMillan is clearly shown stating that he wishes to pass the case on to another judge and only agrees to set bond after being advised by the State Attorney that the defendant has up to 5 DUI priors. The tape further clearly shows Judge McMillan arranging for the defendant to come back before

another judge within 24 hours to make sure he "was not out of line" in setting the bail. It is obvious from the tape that upon finding himself facing Ocura, Judge McMillan makes every attempt to avoid being involved. It is just not logical that someone who wished to involve himself in a case, as McMillan is accused, would state his conflict in open court and immediately attempt to pass on it. Despite this evidence and the testimony of two witnesses which contradicted Judge Farrance's version of events, the JQC hearing panel chose to accept the testimony of Judge Farrance, and found Judge McMillan guilty of mishandling the case and lying about deliberately involving himself in it. There is absolutely no clear and convincing evidence supporting the hearing panel=s findings, particularly the finding of Alack of candor,@ in fact, the evidence supports just the opposite. The findings of the panel on this charge are one of the most blatant deliberate misrepresentations of the evidence to this Court in the entire McMillan case, and it is neither the Acandor@ nor Afitness@ of McMillan that has been called into question, but that of the panel.

Thus, as predicted, a biased judge and jury have now ignored evidence, witnesses and the law; have discarded the presumption of innocence; have lowered the burden of proof to a mere imperceptible level; found Judge McMillan guilty; and

have recommended his dismissal.

- 8. The JQC's continued failure to recognize and appreciate the impact of their biased actions on the litigation process and on the public's confidence in their organization brings the judiciary into disrepute. I respectfully point out to the Court that this Commission has not held itself to the same standards of conduct or followed the same rules of procedure as the judges upon which they sit in judgment. In all of my experience, I have never seen the rights of a defendant so blatantly violated by an agency sworn to uphold them.
- 9. Most of the campaign literature/statements in question (letter to police officers, letter to Earl Moreland, statements regarding Vincent Borne, Bradenton Herald notebook, statements regarding prostitution sentences) were not directed to the voting public and did not reach, let alone procure votes from the public, thus such statements could not have affected the outcome of the election.
- 10. Nevertheless, Judge McMillan has been both candid and sincere in publicly expressing his regret and accepting responsibility for the unintentional errors made during his campaign. Such behavior is highly unusual behavior for any elected

official and has served to increase public confidence in the judiciary.

11. The JQC's repeated reference to public outcry over this perversion of justice in their responses to previous amicus curaie filed in support of Judge McMillan as "unnecessary and inappropriate" is especially offensive to me as a former officer of the court. I felt that as a police officer, I had a public trust, just as judges and attorneys have. It appears to many that the JQC has violated this public trust, abused their power, and demonstrated a disregard for the rule of law. The denial of the most fundamental components of fairness to a defendant by the very body entrusted with assuring the public that other defendants are not denied those same rights guaranteed by the Constitution threatens that liberty for which so many have fought and died.

12. Further, and most importantly, the actions of the JQC, if upheld and condoned by this Court, violate the will of the people who spoke by means of the election process and continue to support Judge McMillan on the bench. There has been no public outcry to remove Judge McMillan; rather, there has been high praise for his conduct on the bench, his deep concern for those who come before him, and his long-overdue improvements to the administration of justice in Manatee County.

13. I respectfully refer the Court to statements recently made by the Court regarding the fundamental rights of the public regarding elections. I note that the Court did not exclude the election of judges in its opinion:

"The text of our Florida Constitution begins with a declaration of rights, a series of rights so basic that the founders accorded them a place of special privilege. The Court long ago noted the venerable role the Declaration plays in our tripartite system of government in Florida."

The Court further stated:

"No race of hothouse plants could every have produced and compelled the recognition of such a stalwart set of basic principles and no such race can preserve them. They say to arbitrary and autocratic power, from whatever official quarter it may advance to invade these vital rights of personal liberty and private property, 'Thus far shalt thou come, but no farther.' YThe right of suffrage is the preeminent right contained in the Declaration of Rights, for without this basic freedom all others would be diminished. The importance of this right was acknowledged by the authors of the Constitution, who placed it first in the Declaration. The first words in the body of the constitution are as follows: 'YAll political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.' ... The framers thus began the constitution with a declaration that all political power inheres in the people and only they, the people, may decide how and when that power may be given up. YThe right of the people to select their own officers is their sovereign right, and the rule is against imposing unnecessary and unreasonable restraints on that right. Y.It is the intention of the law to obtain an honest expression of the will or desire of the voter. The real parties in interest here, not in the legal sense, but in realistic terms, are the voters. They are possessed of the ultimate interest and it is they whom we must give primary consideration. Ours is a government of, by and for the people. Our federal and state constitutions guarantee the right of the people to takean active part in the process of that government, which for most of our citizens means participation via the election process. The right to vote is the right to participate; it is also the right to speak, but more importantly the right to be heard. We must tread carefully on that right or we risk the unnecessary and unjustified muting of the public voice."

The Court then stated:

"We consistently have adhered to the principle that the will of the people is the paramount consideration."

14. The Court did not exempt the election of judges from the premise of its pertinent and persuasive opinion regarding the sanctity of the right of the people to choose their elected officials. I respectfully point out to the Court that the voters of Manatee County agree that this right is sacred, for they resoundingly defeated the recent attempt to do away with elections of judges in favor of the appointment process in a

recent referendum, in spite of the efforts of many to use Judge McMillan's alleged campaign violations as an example of the failure of the judicial electoral system. Through their actions voters soundly rejected that argument and the accompanying amendment by an overwhelming margin. We cherish our right to vote, including our right to elect our judges.

15. The voters elected Matt McMillan to office. They have not asked for his removal, nor have they criticized his performance. His uncalled for removal, prior to the expiration of his term, by the Court rather than by the electorate, would represent an unreasonable and unnecessary muting of the public's voice. The Court must weigh the impact of its actions and the message they will send to an electorate which has been scarred by a presidential election which has left many voters believing they were disenfranchised and others believing their voting rights have been trampled by a Court that overstepped its authority. Is it more important to send a message to potential judicial candidates that an aggressive campaign against an incumbent which includes legitimate criticism of his record, will not be tolerated? Or is it more important to protect a candidate=s First Amendment right to speak and the voter's right to decide? Which course of action presents a greater threat to our democracy? As stated by a voter in a January 15, 2001 letter to the Editor of the

Bradenton Herald: "If the voters of this County think Matt McMillan is unfit to serve on the bench, then this should be decided in the next election. If the powers that be think this would be too long to wait, have a special election for the people to decide. Common sense will dictate the retention of this humane and fair judicial elected official."

The undersigned reaffirms his outrage regarding the JQC's biased treatment of Judge McMillan, re-states his position regarding the inability of Judge McMillan to receive a fair trial before this Commission as evidenced by both their actions and their findings which fly in the face of the evidence and the will of the people, and on behalf of the 1,200 attached signatories and the citizens of Manatee County, respectfully urges the Court to again affirm the principles which they stated so clearly only a few months ago by upholding the will of the voters and retaining Judge McMillan in office.

I once again thank this Court for the opportunity to bring these important concerns to the Court's attention.

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Date